

SCANNED

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

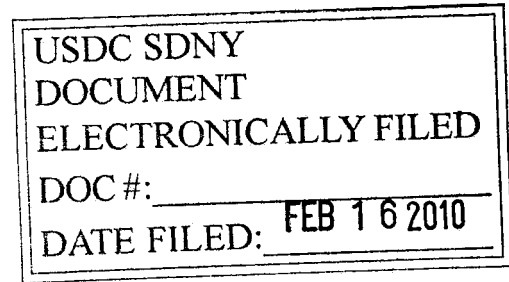
JOHN RAPILLO and HEIDI RAPILLO

-against -

BARRY FINGERHUT, DAVID HOLZER,
FINGERHUT-HOLZER PARTNERS LLC, et al.

09 Civ. 10429 (GBD)

ANSWER



PRO SE OFFICE

LESLEY HOLZER'S ADMISSIONS AND DENIALS

1. Admits that this Court has jurisdiction of litigation under the Securities Exchange Act of 1934. Except as expressly admitted herein, Lesley Holzer denies the rest and remainder of Paragraph 1.
2. Admits that this Court has jurisdiction of litigation under the Securities Exchange Act of 1934. Except as expressly admitted herein, Lesley Holzer denies the rest and remainder of Paragraph 2.
3. Admits that this Court has jurisdiction of litigation under the Investment Advisors Act of 1940. Except as expressly admitted herein, Lesley Holzer denies the rest and remainder of Paragraph 3.
4. Admits that this Court has jurisdiction of litigation pursuant to Title 28 United States Code. Except as expressly admitted herein, Lesley Holzer denies the rest and remainder of Paragraph 4.
5. Lesley Holzer lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 5 and, therefore, denies the same.
6. Lesley Holzer lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 6 and, therefore, denies the same.
7. Lesley Holzer lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 7 and, therefore, denies the same.
8. Lesley Holzer admits defendant David Holzer was and is a resident of the State of New

York; and denies, to the best of her knowledge, that defendant David Holzer is a resident of this district.

9. Lesley Holzer admits that she is was and is a resident of the Sate of New York and of this district. However, Lesley Holzer lacks knowledge or information sufficient to form a belief as to the truth of LESLIE HOLZER being a resident of the State of New York and of this district.

10. Lesley Holzer admits defendant, Douglas Holzer, was and still is a resident of the State of New York. Lesley Holzer denies, to the best of her knowledge, that Douglas Holzer is a resident of this district.

11. Lesley Holzer admits defendant, Jennifer Holzer, was and still is a resident of the State of New York and of this district.

12. Lesley Holzer admits defendant, Joshua Holzer, was and still is a resident of the State of New York and of this district.

13. Lesley Holzer admits defendant, Joseph Holzer, was and still is a resident of the State of New York and of this district.

14. Lesley Holzer admits that defendant, Barry Fingerhut, was an operator of an investment business. Except as expressly admitted herein, Lesley Holzer lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 14.

15. Lesley Holzer admits that defendant, David Holzer, was an operator of an investment business. Except as expressly admitted herein, Lesley Holzer lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 15.

16. Lesley Holzer lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 16 and, therefore, denies the same.

17. Lesley Holzer admits that defendants, Barry Fingerhut and David Holzer, conducted business as Fingerhut-Holzer Partners.

18. Lesley Holzer lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 18 and, therefore, denies the same.

19. Lesley Holzer lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 19 and, therefore, denies the same.

20. Lesley Holzer lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 20 and, therefore, denies the same.

21. Lesley Holzer lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 21 and, therefore, denies the same.

22. Lesley Holzer lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 22 and, therefore, denies the same.

23. Lesley Holzer lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 23 and, therefore, denies the same.

24. Lesley Holzer lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 24 and, therefore, denies the same.

25. Lesley Holzer lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 25 and, therefore, denies the same.

26. Lesley Holzer lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 26 and, therefore, denies the same.

27. Lesley Holzer lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 27 and, therefore, denies the same.

28. Lesley Holzer lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 28 and, therefore, denies the same.

29. Lesley Holzer lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 29 and, therefore, denies the same.

30. Lesley Holzer lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 30 and, therefore, denies the same.

31. Lesley Holzer lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 31 and, therefore, denies the same.

32. Lesley Holzer lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 32 and, therefore, denies the same.

33. Lesley Holzer denies that she was a partner, employee, agent, fiduciary, acting on behalf of, with the direction and permission of, and for the benefit of neither Barry Fingerhut, Fingerhut/Holzer Partners LLC, Fingerhut-Holzer Equities, Fingerhut-Holzer Inc., Fingerhut-Holzer Fund LP, Geo Capital Partners, Inc., Fingerhut-Holzer The Waverly I LLC, nor Fingerhut-Holzer The Waverly II LLC.

34. Lesley Holzer denies entering into any financial partnerships, relationships, associations, agencies, or corporations with any party between the dates of October 10, 2005 and March 23, 2006. Lesley Holzer lacks knowledge or information sufficient to form a belief as to the truth or falsity of the remainder of allegations contained in Paragraph 34 and, therefore, denies the same.

35. Lesley Holzer admits that she was and is the spouse of David Holzer. She admits that Jennifer Holzer, Douglas Holzer, and Joshua Holzer are children of David and Lesley Holzer; and that Joseph Holzer is the father of David Holzer. Except as expressly admitted herein, Lesley Holzer denies the rest and remainder of Paragraph 35.

36. Lesley Holzer denies being an agent or employee of each of the remaining defendants. Lesley Holzer lacks knowledge or information sufficient to form a belief as to the truth or falsity of the remainder of allegations contained in Paragraph 36 and, therefore, denies the same.

37. Lesley Holzer denies being an owner or operator of Fingerhut/Holzer Partners LLC, Fingerhut-Holzer Equities, Fingerhut-Holzer Inc., Fingerhut-Holzer Fund LP, Geo Capital Partners, Inc., Fingerhut-Holzer The Waverly I LLC, nor Fingerhut-Holzer The Waverly II LLC. Lesley Holzer lacks knowledge or information sufficient to form a belief as to the truth or falsity of the remainder of allegations contained in Paragraph 37 and, therefore, denies the same.

38. Lesley Holzer lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 38 and, therefore, denies the same.

39. Lesley Holzer denies being an owner or operator of Fingerhut/Holzer Partners LLC, Fingerhut-Holzer Equities, Fingerhut-Holzer Inc., Fingerhut-Holzer Fund LP, Geo Capital Partners, Inc., Fingerhut-Holzer The Waverly I LLC, nor Fingerhut-Holzer The Waverly II LLC. Lesley Holzer lacks knowledge or information sufficient to form a belief as to the truth or falsity of the remainder of allegations contained in Paragraph 39 and, therefore, denies the same.

40. Lesley Holzer lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 40 and, therefore, denies the same.

41. Lesley Holzer denies being an owner or operator of Fingerhut/Holzer Partners LLC, Fingerhut-Holzer Equities, Fingerhut-Holzer Inc., Fingerhut-Holzer Fund LP, Geo Capital Partners, Inc., Fingerhut-Holzer The Waverly I LLC, nor Fingerhut-Holzer The Waverly II LLC. Lesley Holzer lacks knowledge or information sufficient to form a belief as to the truth or falsity of the remainder of allegations contained in Paragraph 41 and, therefore, denies the same.

42. Lesley Holzer lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 42 and, therefore, denies the same.

43. Lesley Holzer denies being an owner or operator of Fingerhut/Holzer Partners LLC, Fingerhut-Holzer Equities, Fingerhut-Holzer Inc., Fingerhut-Holzer Fund LP, Geo Capital Partners, Inc., Fingerhut-Holzer The Waverly I LLC, nor Fingerhut-Holzer The Waverly II LLC. Lesley Holzer lacks knowledge or information sufficient to form a belief as to the truth or falsity of the remainder of allegations contained in Paragraph 43 and, therefore, denies the same.

44. Lesley Holzer lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 44 and, therefore, denies the same.

45. Lesley Holzer denies receiving any plaintiffs' money. She lacks knowledge or information sufficient to form a belief as to the truth or falsity of the remainder of allegations contained in Paragraph 45 and, therefore, denies the same.

46. Lesley Holzer lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 46 and, therefore, denies the same.

47. Lesley Holzer lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 47 and, therefore, denies the same.

48. Lesley Holzer denies luring the plaintiffs into various investments and denies having had any monies entrusted to her.

49. Lesley Holzer denies participation in a benefit of theft loss and asportation of the assets, goods, channels and trusts of the plaintiffs. Lesley Holzer lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of benefits of "that investment" as stated in Paragraph 49.

50. In answer to Paragraph 50, Lesley Holzer incorporates and realleges answers to Paragraphs 1 through 49.

51. Lesley Holzer denies that she is or was ever subject to The Investment Advisors Act of 1940 being that she was not employed in any occupation between 1976 and 2009 and was not involved in any financial occupation since 1973. Lesley Holzer also has not ever participated in any investment partnerships except as a limited partner, with no management responsibilities whatsoever. Lesley Holzer denies breach of any fiduciary duty because there was none. Lesley Holzer lacks knowledge or information sufficient to form a belief as to the truth or falsity of the remainder of allegations contained in Paragraph 51.

52. Lesley Holzer lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 52 and, therefore, denies the same.

53. Lesley Holzer lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 53 and, therefore, denies the same.

54. Lesley Holzer denies that she was given any monies for investment purposes by the plaintiffs and denies any entitlement of restitution to the plaintiffs.

55. In answer to Paragraph 55, Lesley Holzer incorporates and realleges answers to Paragraphs 1 through 54.

56. In answer to Paragraph 56, Lesley Holzer incorporates and realleges answer to Paragraph 51. Lesley Holzer further states that she never gave investment advice to the plaintiffs.

57. In answer to Paragraph 57, Lesley Holzer incorporates and realleges answer to Paragraph 51. Furthermore, Lesley Holzer lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations pertaining to other defendants contained in Paragraph 57 and, therefore, denies the same.

58. Lesley Holzer has not continued to conceal any wrongdoing to the plaintiffs and in answer she incorporates and realleges answer to Paragraph 33. In addition, Lesley Holzer has had 178 telephone conversations with plaintiff John Rapillo for a total of 734 minutes in the calendar year 2009. Lesley Holzer lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations regarding other defendants contained in Paragraph 58 and, therefore, denies the same.

59. In answer to Paragraph 59, Lesley Holzer incorporates and realleges answers to Paragraphs 1 through 58.

60. Lesley Holzer lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 60 and, therefore, denies the same.

61. Lesley Holzer lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 61 and, therefore, denies the same.

62. Lesley Holzer lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 62 and, therefore, denies the same.

63. Lesley Holzer lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 63 and, therefore, denies the same.

64. In answer to Paragraph 64, Lesley Holzer incorporates and realleges answers to Paragraphs 33 and 51. In addition, Lesley Holzer denies any participation in interstate commerce and/or use of mail with regards to any investment advice.

65. In answer to Paragraph 65, Lesley Holzer incorporates and realleges answers to Paragraphs 33, 34, and 51. Additionally, Lesley Holzer had no knowledge of material facts to state or omit regarding any investments.

66. Lesley Holzer denies engaging in conduct described in this complaint. Lesley Holzer lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations pertaining to other defendants contained in Paragraph 66 and, therefore, denies the same.

67. Lesley Holzer denies having violated any part of the Securities Exchange Act of 1934. Lesley Holzer lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations pertaining to other defendants contained in Paragraph 67 and, therefore, denies the same.

68. Lesley Holzer denies the plaintiffs are entitled to any of the relief requested in Paragraph 68.

69. There is no Paragraph 69, therefore Lesley Holzer submits no answer.

70. In answer to Paragraph 70, Lesley Holzer incorporates and realleges answers to Paragraphs 1 through 69.

71. Lesley Holzer denies making any misrepresentations to the plaintiffs. Lesley Holzer lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations pertaining to other defendants contained in Paragraph 71 and, therefore, denies the same.

72. Lesley Holzer denies making any misrepresentations to the plaintiffs. Lesley Holzer lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations pertaining to other defendants contained in Paragraph 72 and, therefore, denies the same.

73. Lesley Holzer denies making any misrepresentations to the plaintiffs. Lesley Holzer lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations pertaining to other defendants contained in Paragraph 73 and, therefore, denies the same.

74. Lesley Holzer denies taking monies from the plaintiffs. Lesley Holzer lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations pertaining to other defendants contained in Paragraph 74 and, therefore, denies the same.

75. Lesley Holzer lacks knowledge or information sufficient to form a belief as to the plaintiffs' exercising of diligence nor of the plaintiffs' ability to know of the intentions of any other party.

76. Lesley Holzer lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 76 and, therefore, denies the same.

77. Lesley Holzer, with regards to herself, denies Paragraph 77 in its entirety. Lesley Holzer lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations pertaining to other defendants contained in Paragraph 77 and, therefore, denies the same.

78. In answer to Paragraph 78, Lesley Holzer incorporates and realleges answers to Paragraphs 1 through 77.

79. Lesley Holzer, with regards to herself, denies Paragraph 78 in its entirety. Lesley Holzer lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations pertaining to other defendants contained in Paragraph 78 and, therefore, denies the same.

80. Lesley Holzer denies making any representations to the plaintiffs. Lesley Holzer lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations pertaining to other defendants contained in Paragraph 80 and, therefore, denies the same.

81. Lesley Holzer denies making any representations to the plaintiffs. Lesley Holzer lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations pertaining to other defendants contained in Paragraph 81 and, therefore, denies the same.

82. Lesley Holzer lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 82 and, therefore, denies the same.

83. Lesley Holzer lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 83 and, therefore, denies the same.

84. Lesley Holzer denies in performing any of the acts alleged herein and denies acting with fraud and malice. Lesley Holzer denies the plaintiffs are entitled to any of the relief requested in Paragraph 84.

85. In answer to Paragraph 85, Lesley Holzer incorporates and realleges answers to Paragraphs 1 through 84.

86. Lesley Holzer denies any knowledge of money given to plaintiffs for investing. Lesley Holzer denies taking any of the plaintiffs' money.

87. Lesley Holzer lacks knowledge or information sufficient to form a belief as to what constitutes a luxury item. Lesley Holzer has not purchased homes or real estate since 2001. Lesley Holzer admits to purchasing jewelry, art, clothes, and stocks, and admits to purchasing equities - since equities and stocks are the same type of investment security. Lesley Holzer denies purchasing bonds. Lesley Holzer denies receiving monies from the plaintiffs. Lesley Holzer lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations pertaining to other defendants contained in Paragraph 87 and, therefore, denies the same.

88. Lesley Holzer lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 88 and, therefore, denies the same.

89. Lesley Holzer admits that the plaintiffs seek judgment in the amount of \$1900000 plus interest, costs, and disbursement.

90. In answer to Paragraph 90, Lesley Holzer incorporates and realleges answers to Paragraphs 1 through 89.

91. Lesley Holzer denies having any fiduciary duty to plaintiffs (as per answers to Paragraphs 33, 34, and 51). Lesley Holzer lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations pertaining to other defendants contained in Paragraph 91 and, therefore, denies the same.

92. In answer to Paragraph 92, Lesley Holzer incorporates and realleges answers to Paragraph 91.

93. Lesley Holzer denies the plaintiffs are entitled to any of the relief requested in Paragraph 93.

94. In answer to Paragraph 94, Lesley Holzer incorporates and realleges answers to Paragraphs 1 through 93.

95. Lesley Holzer lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 95 and, therefore, denies the same.

96. Lesley Holzer lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 96 and, therefore, denies the same.

97. In answer to Paragraph 97, Lesley Holzer incorporates and realleges answers to Paragraphs 1 through 96.

98. Lesley Holzer denies the plaintiffs are entitled to any of the relief requested in Paragraph 98.

99. Lesley Holzer denies the plaintiffs are entitled to any of the relief requested in Paragraph

99.

Lesley Holzer denies the plaintiffs are entitled to any of the relief requested in the prayer Paragraph. Lesley Holzer disagrees with plaintiffs demand to add treble damages on top of compensatory damages for a total of quadruple compensatory damages.

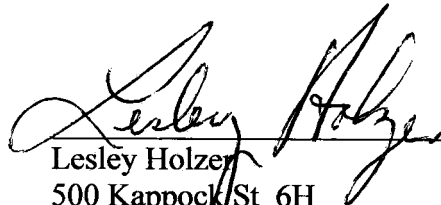
LESLEY HOLZER'S AFFIRMATIVE DEFENSES

1. Plaintiffs have failed to state a claim upon which relief may be granted.
2. Plaintiffs action is barred by the doctrine of accord and satisfaction.
3. Lesley Holzer presently has insufficient knowledge or information on which to form a belief as to whether she may have additional, as yet unstated, defenses available. Lesley Holzer reserves the right to assert additional defenses that are revealed by further investigation or by discovery.

WHEREFORE defendant asks this Court to dismiss the complaint and enter judgment in favor of defendant.

I declare under penalty of perjury that the foregoing is true and correct.

Signed this 16th day of February, 2010.



Lesley Holzer
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Bronx, NY 10463
(718) 884 0477

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JOHN RAPILLO and HEIDI RAPILLO

-against -

09 Civ. 10429 (GBD)

AFFIRMATION OF SERVICE

BARRY FINGERHUT, DAVID HOLZER,
FINGERHUT-HOLZER PARTNERS LLC, et al.

I, Neal M. Richard, **declare under penalty of perjury** that I have served copy of the attached Answer upon Robert J. Conway, Attorney for Plaintiffs, whose address is 116 John Street, New York, NY 10038 by mail.

Dated: New York, NY

February 16, 2010



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